

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALVION PROPERTIES, INC., et al.,)
)
Plaintiffs,)
)
v.) NO. 3:08-0866
) Judge Trauger/Bryant
BERND H. WEBER, et al.,) **Jury Demand**
)
Defendants.)

To: The Honorable Aleta A. Trauger

REPORT AND RECOMMENDATION

Plaintiffs Harold M. Reynolds, Shirley Medley and third-party defendant Donald M. Medley have filed their motion to dismiss the counterclaim and third-party complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Docket Entry No. 363). As grounds for their motion, these parties assert that the counterclaim fails to plead the allegations of fraud with particularity required by Rule 9(b) of the Federal Rules of Civil Procedure; that the contract alleged to have been breached is not attached as an exhibit to the counterclaim; that the claim for damages is not segregated between counter-plaintiffs Weber and Chauveau; and that much of the counterclaim consists of legal labels and conclusory assertions devoid of facts upon which such conclusions are based.

Defendants and counter-plaintiffs Weber and Chauveau are proceeding pro se. Therefore, their pleadings, however inartful, must be held to less stringent standards than pleadings drafted by lawyers. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Although the

counterclaim is neither as short nor as plain a statement of the claims as it could have been, the undersigned Magistrate Judge finds that sufficient facts have been included to allow the parties to develop their claims and defenses through focused discovery. Therefore, the undersigned Magistrate Judge finds that the motion to dismiss the counterclaim pursuant to Rule 12(b)(6) should be denied.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that the motion of plaintiffs and third-party defendant Donald Medley to dismiss the counterclaim for failure to state a claim upon which relief can be granted should be **DENIED**.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'q denied, 474 U.S. 1111 (1986).

ENTERED this 12th day of May, 2011.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge